



Water Supply District of Acton

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Board of Water Commissioners

Meeting Agenda

Monday, January 25, 2021 @ 7:00 PM

Due to the COVID-19 Pandemic, meetings are being held virtually via Zoom

Please click the link below to join the webinar:

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- **Comments from Citizens**
- **Approve minutes from meetings of 1/5 & 1/11**
- **Appoint one Commissioner to approve warrants while conducting meetings virtually**

OLD BUSINESS:

- Update on land lease with Baldco, Inc. at 104 Powdermill Road-Rear
- Follow-up on request from owner of 960 Main Street-Rear
- Update on Per- and Poly-Fluoroalkyl Substances (PFAS)
- Update on proposed solar projects
- Update on the Central Acton Water Treatment Plant (CAWTP) project
- DRAFT Budget for Fiscal Year 2022 (FY '22)

NEW BUSINESS:

Any agenda item(s) which did not come to the attention of the Board of Water Commissioners 48 hours prior to this meeting and were not reasonably anticipated

Board of Water Commissioners Meeting Minutes
Acton Water District
Tuesday, January 5, 2021 3:10 PM

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting was conducted via Zoom.

AGENDA

Conduct interviews with prospective candidates for outside special counsel.

Present at Today's Meeting:

Commissioners: Erika Amir-Lin, Stephen Stuntz, Barry Rosen

District Manager: Chris Allen

Environmental Manager: Matthew Mostoller

District Counsel: Mary Bassett

District Treasurer: Mary Jo Bates

Robert Cox, Esq. of Bowditch & Dewey

Lynn Preston, Esq. of Sheehan, Finney, Bass & Green

The meeting was called to order at 3:10 PM on Tuesday, January 5, 2021 by Ms. Erika Amir-Lin.

Ms. Amir-Lin introduced the Board and invited the first candidate, Robert Cox, Esq. of Bowditch & Dewey to introduce himself to the Commissioners.

Atty. Cox has worked in environmental law for over 30 years with Bowditch & Dewey. He has experience issuing and responding to contamination action letters. Atty. Cox is the managing partner in the firm, with 60 attorneys and 3 offices. He is currently District Counsel for the Upper Blackstone Clean Water District, has worked with the City of Worcester on the public water supply plan and with Barnstable County on their PFAS contamination. Bowditch & Dewey is a member of the Environmental Business Council of New England. Atty. Cox has worked with our LSP, GeoInsight and MA Department of Environmental Protection (MA DEP), Central Regional Office (CERO) and maintains a good relationship with both. His regular rate is \$525 per hour. He offers a discounted municipal rate at \$420 per hour. He would also utilize an experienced environmental associate for some of the work, touting his efficiency due to experience.

The Commissioners asked questions about his DEP experience, cost recovery and the need for a retainer. Atty Cox explained that he is comfortable picking up the phone with DEP and prefers a strategic approach. He added that the statute sets forth the process for recovery. Response action costs and fees can be recovered. He prefers good faith settlement discussions and negotiation.

Most claims settle before court. He is open to a flexible arrangement regarding a retainer and would like the opportunity to work with the District. Ms. Amir-Lin thanked him for his time.

Ms. Amir-Lin introduced the Board to Lynn Preston, Esq. of Sheehan, Finney, Bass & Green and invited her to introduce herself.

Atty. Preston has 25 years in Environmental work. She began her career as a chemical engineer and has supervised many contamination cleanups across the country. She currently practices law in Massachusetts and New Hampshire and is Chair of the Environmental Practice Group at Sheehan, Finney, Bass & Green. Her DEP experience includes as counsel to a PWS in Worcester County that was successfully settled. Atty. Preston is Special Counsel to the Pease Development Authority in NH for all environmental regulatory enforcement, including multi-state litigation. She has had success in cost recovery actions at the federal and state level for groundwater contamination. Her firm offers robust real estate support if needed. Atty. Preston offers a municipal rate of \$370 per hour.

The Commissioners asked questions about DEP experience, cost recovery and the need for a retainer. Atty. Preston said she prefers a gentle approach with DEP. Her focus is to avoid litigation whenever possible. She has experience with DEP CERO and hopes the clean-up and cost recovery can happen concurrently. She is flexible on the need for a retainer and appreciates the opportunity to work with the District. Ms. Amir-Lin thanked her for her time.

Under discussion, the Commissioners were pleased to have 2 very good candidates to choose from and thanked Chris, Matt and Mary for their efforts. The goal is to protect our interests and preserve our standing with DEP as well as recover costs. The Commissioners expressed a slight preference for Atty. Cox due to his long experience in the state of Massachusetts. Mr. Stuntz made a motion to appoint Atty. Robert Cox as outside special environmental counsel. It was seconded by Mr. Rosen and unanimously approved on a roll call vote.

Mr. Stuntz, aye, Mr. Rosen, aye, Ms. Amir-Lin, aye.

Atty. Bassett will reach out to Atty. Cox and should have a letter of engagement from the meeting on Monday, January 11, 2021.

Ms. Amir-Lin moved to adjourn the meeting at 5:00 PM. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote.

Mr. Stuntz, aye, Mr. Rosen, aye, Ms. Amir Lin, aye

Board of Water Commissioners
Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton, MA
Monday, January 11, 2021

AGENDA

- A. Comments from Citizens
- B. Approve minutes from meeting of 12/21/20
- C. Appoint one Commissioner to approve warrants while conducting meetings virtually
- D. OLD BUSINESS:
 - 1. Follow-up on the request from the property owner at 960 Main Street-Rear
 - 2. Update on Per- and Poly-Fluoroalkyl Substances (PFAS)
 - 3. Update on proposed solar projects
 - 4. DRAFT Budget for Fiscal Year 2022 (FY '22)
 - 5. Discussion of the Annual District Meeting timeline
- E. NEW BUSINESS:
 - 1. Review and approve Letter of Engagement with Attorney Robert Cox
 - 2. Update on the District's water conservation rebate program

Present at Tonight's Meeting:

Commissioners: Erika Amir-Lin (Chair), Stephen Stuntz, Barry Rosen
District Manager: Chris Allen
District Treasurer: Mary Jo Bates
District Counsel: Mary Bassett
Environmental Manager: Matthew Mostoller
Commissioners Secretary: Lynn Protasowicki
Finance Committee: Bill Guthlein

Board of Selectmen:

Jim Snyder-Grant, Liaison to the Water District

Citizens:

Kim Kastens
Ron Parenti

Due to the Covid-19 stay-at-home order by Governor Charles Baker, the Board of Water Commissioners meeting was not held at the Acton Water District Office, instead the meeting was held via Zoom Webinar. The meeting was called to order at 7:00 PM on Monday, January 11, 2021 by Ms. Erika Amir-Lin.

A. Comments from Citizens

No comments tonight.

B. Approve Minutes from Meeting of 12/21/20

Mr. Rosen moved to approve the minutes of December 21, 2020. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, and Ms. Amir-Lin.

C. Appoint One Commissioner to Approve Warrants While Conducting Meetings Virtually

Ms. Amir-Lin moved to appoint Mr. Rosen as the Commissioner to approve warrants while conducting meetings virtually. Mr. Stuntz seconded the motion, and it was unanimously approved by a roll call vote: Mr. Stuntz, Ms. Amir-Lin, and Mr. Rosen.

D. OLD BUSINESS:

1. Follow-up on the Request from the Property Owner at 960 Main Street-Rear.

Mr. Allen reached out to the MA Inspector General's (MA IG) office and proposed the scenario that was being requested by the applicant. The response he received from the Inspector General is that it is not allowed. It's an interest in real property and it's something being requested of the District vs. something that the District is seeking, i.e., Cell Tower lease, solar lease, etc. Included in tonight's packet to the Commissioners is a copy of the MA General Law Chapter 30B Section 16, which is what Mr. Allen sent back to the co-applicant. It seems like a dead issue on the District's end.

Counselor Bassett stated that historically the District issues a RFP for the District's purposes. This request from a private owner/developer for permission to use District property, which is not for the public water supply purposes, may not be in the District's purview.

2. Update on Per- and Poly-Fluoroalkyl Substances (PFAS).

Mr. Allen informed the Commissioners that we are moving forward with a short duration pump test on the Assabet 3 source starting next week. The contractor (Maher Services out of North Reading) will be setting the test pump in the well and pumping at approximately 200-gallons per minute (gpm) to assess the source and the water quality from it. This will give us a better data point, building on the sampling that was done in April of 2020.

We have begun the additional piloting at North Acton to test for that pressure anomaly that we had experienced with the original PFAS pilot last fall. That started last Wednesday and is expected to last at least three weeks.

Mr. Mostoller informed the Commissioners that we will begin monthly monitoring of the treated water for PFAS. The MA Department of Environmental Protection (MA DEP) has decided that because we are at or below the MCL that they consider this going to a monthly as opposed to a quarterly sampling protocol. They want the monthly data to ensure whatever treatment or changes in operations that we've put in place is going to meet the standard going forward. This data we collect starting next week will determine if we are in compliance with new PFAS regulations. All the work we started at the beginning of 2020 and we collected all year (2020) was a fact finding mission but now moving forward they will only care about data going forward. We did hear from technical assistance providers that MA DEP has contracted with UMass and that some of our data has been rejected due to Quality Assurance/Quality Control (QA/QC). At least six of the data sets have been rejected and so DEP will pay for those new samples.

Mr. Stuntz inquired as to how many sources we sample? Mr. Mostoller stated that going forward we will sample the Conant 1 well, North Acton Water Treatment Plant (NAWTP), Clapp/Whitcomb, and South Acton Water Treatment Plant. Because we already have Granular Activated Carbon (GAC) installed at Clapp/Whitcomb facility that has been non-detect for PFAS, DEP will have us collect monthly samples in between the two carbon vessels which may provide early detection if the carbon is starting to be spent at PFAS removal.

Mr. Mostoller mentioned that we will continue to do some raw water monitoring to help us understand if numbers go up in the treated water what the cause of it is and which well is came from.

Kim Kastens: did not hear about the raw water sampling at Assabet 3. Asked if they could elaborate on what they found?

Mr. Mostoller stated that back at the end of April we had our hydrogeologist sample Assabet 2 and 3. They did a very short duration movement of the water in the well column. Most of the standard regulated compounds were tested including PFAS and 1,4-dioxane. The 1,4-dioxane data at Assabet 3 was lower than what we had seen at the conclusion of the pumping test which occurred in 2007. Recently, with DEP approval we reactivated the Assabet 2 well to regain some of the volume that we had lost at Assabet 2A and also due to a lower PFAS concentration. We are pumping Assabet 1A at a lower volume. We are interested in seeing if Assabet 3 can be reactivated. It appears that PFAS and 1,4 Dioxane in the well are at lower concentrations.

Kim Kastens: question about Assabet 3 – when Concord drilled their well in their bus depot site EPA was distressed because introducing a new well would change the groundwater flow patterns and would invalidate the ground water modeling on which they had designed their remedy. Would there be a similar problem with activating Assabet 3? Mr. Mostoller stated that no, a lot of the modeling that has gone on has taken into account the potential of reactivation of Assabet 3. The current iteration of the superfund managers has stressed to us is that if the District can do something legally then they have to find a way to make sure their remedy still works while allowing us to do something we are allowed to do. At this time we have approval from MassDEP to reactivate Assabet 3 well. And, we have been in discussions with drinking water program and superfund program our intentions of activating that source.

Mr. Allen mentioned that Assabet 3 engineering was the basis of the round 2 PFAS grant application which was submitted to MassDEP in December of 2020. We should know if we are an awardee in February.

3. Update on Proposed Solar Projects.

Mr. Allen mentioned that the only update is the conversation that Mr. Rosen had with Jim Snyder-Grant and Town Manager, John Mangiaratti. Otherwise the Board had a thorough update at the last meeting from Peter Bay of EDF Renewables.

Mr. Rosen stated that he had a follow up discussion with Jim Snyder-Grant in ways that the District could work with the Town to find ways of lowering the amount of dollars in the pilot so that we wouldn't have to share expenses when we get over the \$45K developer imposed cap. He explained how that amount came about. We want to get below that number so that it doesn't cost

us anymore. It is circular taxing of the rate payers who are the taxpayers in town. Jim Snyder-Grant and I are looking at some ways to justify lowering it. Jim Snyder-Grant explained that the problem the Town Manager had mentioned to him was that the Department of Revenue (DOR) is not the easiest organization to work with and that they were following the DOR guidelines in charging for the pilot cost and in order to lower that cost they would need some justification. They came up with some justifications:

1. The project income is proprietary by EDF Renewables, and thus they will not disclose it to the Town.
2. Some number from EDF about how much cost sharing there will be – we are waiting on that number.
3. Show any other methods where we are trying to lower the Town's costs – Commissioners established the municipal rate (.048 per cubic foot regardless of the time of year). Mr. Rosen spoke with Mr. Allen and ran a chart that showed over the course of a year, the town saved \$31k in metered sales due to the municipal rate. We provided that chart and passed on to the Town Manager and Jim Snyder-Grant that showed from July 2019 through April 2020 that the town saved about \$31K.
4. Asking to provide us with a statement for pilot costs that states that anything greater than \$45K would have a financial impact on the solar lease to the District.

He stated that Jim Snyder-Grant is working with the Town Manager and Jessica Wall (the Town's attorney) on this. And the Town agreed to go back to the DOR with data to get the DOR to agree to lower the pilot costs for the District.

Mr. Rosen hopes to have an update for the next meeting.

4. DRAFT Budget for Fiscal Year 2022 (FY '22).

Mr. Allen mentioned that the District Treasurer sent the Commissioners a revised draft budget that includes six-month actual numbers for the current fiscal year. Mr. Allen went through the budget and did some specific examinations of some of the numbers proposed for Central Acton. Looks like the treatment plant proposed to go on after 1st quarter. May be able to reduce the Chemical line from \$120k to \$100K; and he was looking at the Legal line item and thinking it should go up because of the hiring of Robert Cox, Special Environmental Counsel. Mr. Stuntz suggested raising it \$20K.

Mr. Allen mentioned that the Finance Committee did want to comment tonight – Bill Guthlein – stated that the Finance Committee came up with two issues during their December meeting.

1. How to fund the increase in debt payments – the Committee voted to 2 for and 1 against to recommend that the debt fee be paid on a variable rate which based on water usage and would be a change since currently it is a fixed rate based on hook-up. This would give smaller water users some relief and larger users would be paying more using the variable rate. This was a decision not specific to budget but has been ongoing discussions based on water usage. About 1/3rd of the water districts are variable and others have a mix. Some scenarios working against the variable debt service fee would be confusion to

customers how the variable rate is calculated and explaining it to them; cubic feet would be different so there would be over collecting or under collecting each quarter. It is a complex method in collecting debt fees. We believe that 2:1 it would be better to go variable.

2. Whether or not a Stabilization fund would make sense for the District- it was unanimous that it is not the right time to fund a stabilization fund.

Ms. Amir-Lin had a question about the variable rate – our number of customers fluctuate, and the amount of water people use fluctuates so customers would see variable debt rates change quarter to quarter. Is that how she understands that? Bill stated that is correct. If the water use changes you need to provide relief or collect more. Erika worries that it would be a conservation issue that would drive use down the debt still has to be paid; could they be paying in more fees than what they are paying for now? Bill stated that the total fees will be the same no matter what. The trend amongst other water facilities is to go with a variable rate.

Mary Bassett stated that although she is not bond counsel for the District, she knows that when these bonds went out to bid there was a promise on how the District would pay them back and our current method is how we get this good rate. The District would need to disclose and discuss and have reviewed by bond counsel and to make sure it is something that is allowable under the bonding requirements.

Matt Mostoller – two quick points to keep in mind: (1) our rate and fee structure is more progressive than many utilities so when the state is looking at the way we are raising our rates and operating our bond debt fee it is considered a good thing in their eyes. Bill raises a good point of the ratio of fixed vs variable that we need to be mindful of. How we relate to other utilities is important as well as where the industry is trying to go. (2) Utilities to others our size the District is doing a lot. We have taken on \$27 million in capital projects which most utilities of our size are not doing. We are on treatment plant number 3 right now and also acquire land for source protection, which impacts bond debt. We are facing and addressing problems rather than ignoring them.

Kim Kastens – her comment has to do with environmental justice or equity. She can't fully anticipate or model it in her head how such a change would impact the better off and less well off people in our community but sounds like a more equitable pricing scheme to make it more affordable to live here. She suggests that the District model the effect of such change would be (what fraction would see their bill go up by nothing; go down; stay the same, etc.). It would be an incentive for people to save water (environmental sustainability).

Mr. Rosen – by hooking up to the District you are purchasing capability to use water and that comes with fixed fees. The fixed fees are our infrastructure. Our variable fees are procuring the product (drawing the water) and that is what makes your costs go up and down. Our customers are some of the most conservative water users in the area and they are aware and do try to conserve water. Our fee structure for water is two tiered so that more product you use the more you pay per cubic for our product which encourages saving and for those that use a great deal of water in the summer months we have a second tier which is a higher variable rate in the summer

months to encourage them to water less. With our current structure and our debt fee structure we are separating our fixed costs from our variables. People accept and understand the way we structure our fees. Trying to explain a fixed cost being variable from quarter to quarter will be difficult. He is not a fan of changing our structure.

Mr. Stuntz – One reason it came up at the last meeting was the state revolving fund was pushing debt into us and was jumping the fee substantially. We may consider doing a three year rolling average rather than trying to take it period by period. He agrees with Barry about not changing the structure. Another reason we separate the two was worried that we'd build the dollar amount into our rate structure and when the debt was paid off we have all this money and how to spend it. He wanted to make sure that the District was not building up cash reserves.

Ms. Amir-Lin doesn't seem like we have to move on tonight. This is the first discussion about the recommendation. Interesting issues raised by all here tonight. We will need to do some data gathering to have a more informed discussion. She would like to keep in our budgetary orbit for now. But for tonight it is just in discussion phase.

5. Discussion of the Annual District Meeting Timeline.

Mr. Allen mentioned that the Board of Selectmen at a meeting last year voted to set the Town's Annual Meeting date "to be determined" (TBD), but prior to June 30, 2021. Due to the ongoing impacts of the COVID-19 Pandemic, Mr. Allen recommends that the District follow suit, and vote similarly for the District's Annual Meeting which would be held on March 17, 2021, the third Wednesday in March, by Bylaw.

Mr. Stuntz moved to schedule the Annual District Meeting at a date to be determined, but prior to June 30, 2021. Ms. Amir-Lin seconded the motion and it was unanimously approved by a roll call vote: Mr. Stuntz, Mr. Rosen, Ms. Amir-Lin

Mr. Allen stated that the meeting needs to be posted 14 days prior to the date of the Annual District Meeting. We typically post the meeting a month prior to holding it.

E. NEW BUSINESS:

1. Review and Approve Letter of Engagement with Attorney Robert Cox.

Ms. Amir-Lin stated that we had an excellent session and interview with two firms last week. We selected Attorney Robert Cox of Bowditch and Dewey, LLP.

Counselor Bassett did review the letter of engagement. She did ask the firm to waive the \$3,000.00 retainer, and they agreed to it, so it is not included in the letter. Otherwise, the agreement is pretty standard.

Mr. Rosen moved to appoint Bowditch and Dewey LLP as special counsel and that the Commissioners sign the new letter of engagement from Attorney Robert Cox. Mr. Stuntz seconded the motion and it was unanimously approved by roll call vote: Mr. Stuntz, Mr. Rosen, Ms. Amir-Lin.

2. Update on the District's Water Conservation Rebate Program.

Mr. Mostoller gave an update in the 2020 water conservation rebate program, which includes toilets (\$100), washing machines (\$150), plumbing fixtures (25% of purchase price), and subsidized purchase of rain barrels (\$50 per barrel). He commented that the District does continue to see a positive response to the rebate program. Mr. Mostoller made a PowerPoint presentation to the Board. This is included in the Board packet for tonight's meeting.

Ms. Amir-Lin motioned to adjourn the open meeting at 8:30 PM. Mr. Stuntz seconded the motion and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, Mr. Stuntz.

DRAFT